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NO. ____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

PAN AMERICAN WORLD AIRWAYS, INC.,
Appellant,

v.

GEORGE PUCHERT,
Appellee.

# APPENDIX TO THE JURISDICTIONAL STATEMENT

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TABLE OF CONTENTS


| | | Page |
|---|---|---|
| Appendix A | Opinion of the Supreme Court of the State of Hawaii, dated January 27, 1984 | A-1 |
| Appendix B | Notice of Appeal to the Supreme Court of the United States, filed April 18, 1984 | A-16 |
| Appendix C | Order, dated May 25, 1984 | A-21 |
| Appendix D | Hawaii Revised Statutes, Sections 378-31, *et seq.* | A-22 |
| Appendix E | Railway Labor Act, 45 U.S.C., Sections 151, *et seq.* | A-25 |
| Appendix F | National Labor Relations Act, Sections 141, *et seq.* | A-60 |
| Appendix G | Agreement Between Pan American World Airways, Inc. and Transport Workers Union of America, AFL/CIO, Effective November 1, 1977 | A-69 |

# APPENDIX A

SUPREME COURT OF HAWAII
Syllabus

GEORGE K. PUCHERT, APPELLANT
v.
JOSHUA C. AGSALUD, in his capacity as Director of the State of Hawaii, Department of Labor and Industrial Relations; and PAN AMERICAN WORLD AIRWAYS, Appellees

NO. 8908

APPEAL FROM THE FIRST CIRCUIT COURT
HONORABLE TOSHIMI SODETANI, JUDGE

(Civil No. 64062)

January 27, 1984

SUPREME COURT OF HAWAII—I

Syllabus

GEORGE K. PUCHERT, Appellant, *v.* JOSHUA C. AGSALUD, in his capacity as Director of the State of Hawaii, Department of Labor and Industrial Relations; and PAN AMERICAN WORLD AIRWAYS, Appellees

NO. 8908

APPEAL FROM THE FIRST CIRCUIT COURT
HONORABLE YOSHIMI SODETANI, JUDGE

(CIVIL NO. 64062)

JANUARY 27, 1984

LUM, C.J., PADGETT, HAYASHI, AND WAKATSUKI, JJ.,
AND ASSOCIATE JUDGE TANAKA IN PLACE OF
NAKAMURA, J., DISQUALIFIED

APPEAL AND ERROR — *determination of questions of jurisdiction in general.*

Although federal pre-emption was not the basis for dismissal by the administrative agency and the lower court, the question of a court's jurisdiction cannot be disregarded.

LABOR RELATIONS — *labor relations act — validity — effect of federal legislation — exclusive, concurrent, and conflicting jurisdiction.*

The doctrine of labor law pre-emption concerns the extent to which congress has placed implicit limits on the permissible scope of state regulation of activity touching upon labor-management relations.

SAME — *mediation, conciliation, and arbitration — Railway Labor Act.*

The Railway Labor Act provides for compulsory arbitration to settle "minor disputes" which exist where a collective bargaining agreement provides a remedy for the alleged wrongful act.

SAME — *unfair labor practices — discharge — work injury — judicial remedies*

A complaint of unlawful discharge from employment solely because the discharged employee suffered a work injury compensable under the state workers' compensation law finds its source in the statute and not in the collective bargaining agreement.

SAME — *mediation, conciliation, and arbitration — Railway Labor Act — judicial remedies.*

A complaint of unlawful discharge from employment based upon a statutory right is not subject to mandatory arbitration under the Railway Labor Act.

SAME — *same — arbitration agreements — matter subject to arbitration.*

An arbitrator may only arbitrate disputes arising under the provisions of the collective bargaining agreement and is limited to the interpretation and application of provisions contained within the agreement.

## SUPREME COURT OF HAWAII—2

### Opinion of the Court

SAME — *same — discharge and layoff — judicial remedies.*

Where a discharged employee's claim of unlawful discharge has its source in state statute, and his claim is not identical to any claim he may make under the collective bargaining agreement, he is not limited to pursuing remedies in the grievance and arbitration procedures established under the collective bargaining agreement.

SAME — *labor relations acts — validity — effect of federal legislation.*

Although a discharged employee's state law claim of unlawful discharge did not interfere with the provisions of the collective bargaining agreement, the court must also consider whether the application of the state statute interferes with the scheme of the federal Railway Labor Act.

SAME — *same — same — same.*

Problems and considerations involved in federal-state relations under the Railway Labor Act are analogous to those under the National Labor Relations Act.

SAME — *same — same — same.*

State statutes prohibiting unlawful discharges for injuries compensable under workers compensation laws are not pre-empted by the Railway Labor Act because such laws are pre-eminently a matter of state concern and are of peripheral concern to the federal labor laws.

SAME — *unfair labor practices — discharge — work injury — judicial remedies.*

The state has a substantial interest in the welfare of workers who are injured in the course of their employment and to see that they are not penalized for pursuing remedies granted to them by statute.

STATUTE — *general rules of construction — plain meaning.*

Where the language of a statute is plain and unambiguous, and the literal application of the language would not produce an absurd or unjust result and the language is clearly consistent with the purposes and policies of the statute, judicial construction is inappropriate and the court's duty is to give effect to the law according to its plain and obvious meaning.

SAME — *same — intention of legislature.*

Where the language of the statute is ambiguous, the court's primary objective is to ascertain and give effect to legislative intention.

WORKERS' COMPENSATION — *liberal or strict construction in general.*

The court has long recognized the remedial character of the workers compensation statutes and has construed them liberally to effectuate their beneficient purposes.

LABOR RELATIONS — *unfair labor practices — discharge — work injury — judicial remedies — liberal construction.*

Since the legislative intent of HRS § 378-32(2) is to protect claimants under the workers' compensation statute, the time limits established under HRS § 378-33(b) should be liberally construed to accomplish the humanitarian objective of the legislation.

SAME — *same — same — same — same.*

The construction of HRS § 378-33(b) allowing for a hearing on the merits and providing the employee with the avenue by which he may be afforded a remedy for the violation of his rights would be more consonant with the legislative enactment of remedial social legislation for workers than would a technical reading which would deny relief without an opportunity to be heard.

SAME — *same* — *same* — *same* — *same*.

HRS § 378-33(b) establishes only the outside limit after which a complaint may not be filed. An employee may file a complaint prior to the date he is able to return to work.

OPINION OF THE COURT BY WAKATSUKI, J.

This is an appeal of the first circuit court's affirmance of the director of labor and industrial relations' dismissal of Appellant's complaint of unlawful discharge from employment pursuant to Hawaii Revised Statutes (HRS) § 378-32(2). The complaint was dismissed for untimely filing under HRS § 378-33(b).

The primary issue involves the construction of a statute, HRS § 378-33. As construed by the director and the lower court, HRS § 378-33(b) requires the filing of a complaint of unlawful discharge from employment only after an employee is able to return to his former job, and not any sooner. We hold that such a construction of the statute does not comport with the legislative purpose and intent of HRS §§ 378-32 and 378-33, and therefore, we reverse.

The parties involved in this action are (1) Appellant Puchert, the employee who filed the complaint of unlawful discharge; (2) Appellee Pan American World Airways (Pan Am), the employer against whom the complaint was filed; and (3) Appellee Agsalud, Director of the Stat Department of Labor and Industrial Relations (Director) who dismissed Puchert's complaint.

At the time of his alleged unlawful discharge, Puchert had been employed for several years as a port steward by Pan Am. On several occasions, Puchert had suffered back injuries at work, the last of which occurred on December 30, 1978. Due to this December 30th injury, Puchert did not return to work until January 6, 1979, at which time he was allowed to do only light duty work upon the instructions of his chiropractor. By letter of January 9, 1979, Puchert was discharged by Pan Am. The basis for this discharge was Puchert's physical limitations in performing his work.

On January 14, 1979, Puchert, through his union (Transport Workers Union of America), filed a grievance with Pan Am as to his discharge pursuant to a collective bargaining agreement between Pan Am and the Transport Workers Union. The grievance was brought before the Board of Adjustment for arbitration on Feb-

ruary 7, 1979. The Board's decision modified Puchert's dismissal to a medical leave of absence not to exceed six months, and further, required that Puchert, during that six-month period, obtain a medical report from a physician approved by Travelers Insurance Company and a permanent disability rating from the State Department of Labor and Industrial Relations (department) Workers Compensation Division which would not restrict him from performing any of the duties of a port steward. The decision further stated that, upon his return to work, Puchert would be required to comply with Pan Am's attendance standards.

On June 1, 1979, Puchert filed a complaint, pursuant to HRS § 378-32, for unlawful discharge against Pan Am with the department's Enforcement Division. Prior to filing his complaint, Puchert was advised by department personnel to wait until he was released by his doctor to return to work but this advice was not heeded and the complaint was filed.

Five days prior to the expiration of Puchert's medical leave of absence, as granted by the Board of Adjustment, Pan Am asked Puchert to advise the compandy of his intention to return to work.

On August 1, 1979, Puchert's chiropractor submitted a letter to the department stating that Puchert was still only available for light duty work. However, on August 6, 1979, Puchert was able to obtain a letter from the same chiropractor releasing him for regular duty "on a trial basis."

The facts are not clear whether Puchert reported for duty on August 7, 1979, and was then discharged, or whether he received notification of his termination in some other manner. Nonetheless, Pan Am contends that on August 7, 1979, Puchert had not complied with the terms of the Board of Adjustment's decision, and therefore he had no right to return to work.

Neither on August 7, 1979, nor at any time thereafter did Puchert file another complaint with the department for unlawful discharge.

In June, 1980, a year after Puchert filed his complaint for unlawful discharge with the department, and ten months from the date he was allegedly able to return to work as a port steward, the department held hearings on Puchert's complaint of June 1, 1979. Thereafter, the hearing officer recommended that the complaint be dismissed for lack of jurisdiction due to the untimely filing of the

complaint. The hearing officer concluded that under HRS § 378-33, the only time Puchert could file a complaint for unlawful discharge was within thirty days after his January 9, 1979 discharge, or within thirty days from the date he was able to return to work. Director Agsalud concurred with the hearing officer's recommended decision. Puchert appealed, and the circuit court affirmed the director's decision.

I.

Before proceeding to an analysis of HRS § 378-33, we address Pan Am's assertion the federal pre-emption applies in view of the federal labor law which provides that where a collective bargaining agreement provides for a resolution of a dispute of this nature through grievance and arbitration proceedings, this Court lacks jurisdiction. Although federal pre-emption was not the basis upon which the director and the circuit court dismissed Puchert's complaint, the question of a court's jurisdiction cannot be disregarded. *State v. Johnston*, 63 Haw. 9, 11, 619 P.2d 1076, 1077 (1980).

The doctrine of labor law pre-emption concerns the extent to which congress has placed implicit limits on the permissible scope of state regulation of activity touching upon labor management relations. *New York Telephone Co. v. New York State Department of Labor*, 440 U.S. 519, 527 (1979).

The Railway Labor Act (RLA), 45 U.S.C. 151 *et seq.*, which applies in this case, provides for compulsory arbitration to settle "minor disputes". *Andrews v. Louisville and Nashville RR Co.*, 406 U.S. 320 (1972), *International Assn. of Machinists, AFL-CIO v. Central Airlines*, 372 U.S. 682 (1963), *Schroeder v. Trans World Airlines, Inc.*, 702 F.2d 189 (9th Cir. 1983). A "minor dispute" exists where a collective bargaining agreement provides a remedy for an alleged wrongful act. *Andrews, supra; Schroeder, supra; RFA Express, Inc. v. Brotherhood of Ry, Airline and Steamship Clerks, etc.*, 459 F.2d 226 (5th Cir. 1972).

Cases holding that state law claims are pre-empted by the RLA are clearly distinguishable. The complaints filed in those cases constituted state law claims that were non-existent but for the collective bargaining agreement which provided remedies for such claims, or the state law claims were identical to the contractual claims provided for in the collective bargaining agreement. *E.g., Andrews v. Louisville*

*and Nashville RR Co., supra,* (state law claim of unlawful discharge depended solely on contract right not to be discharged); *Schroeder v. Trans World Airlines, Inc., supra* (complaint of unlawful business practices in violation of California statutes was actually a complaint of wrongful demotion under the collective bargaining contract); *Beers v. Southern Pacific Transportation Co.*, 703 F.2d 425 (9th Cir. 1983) (complaints alleging intentional infliction of emotional distress referred to rights covered or substantially related to the collective bargaining agreement); *Magnuson v. Burlington Northern, Inc.*, 576 F.2d 1367 (9th Cir. 1978) (emotional distress incident of discharge from employment rather than result of alleged conspiracy); *Jackson v. Consolidated Rail Corp.*, 717 F.2d 1045 (7th Cir. 1983) (state claim raised identical to claim employee would have made had he pursued his grievance through channels specified in the collective bargaining agreement).

Puchert's complaint, however, does not constitute a "minor dispute" subject to mandatory arbitration under the RLA. The resolution of the dispute in question does not hinge on the application or interpretation of the collective bargaining agreement between Pan Am and Puchert's union. Puchert complains of a violation of his right not to be discharged from his employment solely because he suffered from a work injury compensable under the state's worker's compensation law. This right finds its source not in the collective bargaining agreement between Pan Am and Puchert's union, but in the statute. *See Air Line Pilots Assn. v. Northwest Airlines, Inc.*, 627 F.2d 272 (D.C. Cir. 1980).

If Puchert were not permitted to pursue his claim of wrongful discharge under HRS § 378-32 before the state agency and courts, he would have no forum in which to press his claim. An arbitrator may only arbitrate disputes arising under the provisions of the collective bargaining agreement, 51A *C.J.S.* Labor Relations § 429 (1967), and is limited to the interpretation and application of provisions contained within the agreement. *United Steelworkers of America v. Enterprise Wheel*, 363 U.S. 593 (1960). The arbitrator — in this case the Board of Adjustment — would have no authority to consider Puchert's statutory claim. *See Air Line Pilots Assn. v. Northwest Airlines, supra; Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1973).

Other employment relations cases brought under federal statutes have held that where the right upon which the complaint is

based is statutory, courts are not denied jurisdiction merely because a collective bargaining agreement exists which provides for grievance and arbitration procedures. *Alexander v. Gardner-Denver Co., supra; Harris v. Norfolk and Western Railway Co.*, 616 F.2d. 377 (8th Cir. 1980) (race discrimination suits brought under Title VII of the Civil Rights Act of 1964); *Barrentine v. Arkansas-Best Freight System*, 450 U.S. 728 (1980) (wage dispute under Fair Labor Standards Act); *Airline Pilots Assn. v. Northwest Airlines, supra* (violation of ERISA fiduciary standards in managing collectively bargained pension plan); *Johnson v. American Airlines, Inc.*, 487 F. Supp. 1343 (N.D. Tex. 1980) (suit brought under the Age Discrimination in Employment Act).

State court jurisdiction has similarly been upheld where it was clear that the source of the right alleged to have been violated was state statute rather than the collective bargaining agreement. *Bald v. RCA Alascom*, 569 P.2d 1328 (Alaska 1977) (religious discrimination in violation of state antidiscrimination statute); *Franklin Manufacturing Co. v. Iowa Civil Rights Commission*, 270 N.W.2d 829 (Iowa 1978) (employer's group insurance plan violative of state sex discrimination laws); *Peabody Galion v. Dollar*, 666 F.2d 1309 (10th Cir. 1981), and *Vaughn v. Pacific Northwest Bell Telephone Co.*, 289 Or. 73, 611 P.2d 281 (Oregon 1980) (violation of state statute prohibiting discharge for filing workers compensation claims).

Inasmuch as Puchert's claim of unlawful discharge has its source in state statute and his claim is not identical to any claim he may make under the collective bargaining agreement, we hold that Puchert is not limited to pursuing remedies in the grievance and arbitration procedures established under the collective bargaining agreement.

Although we find that Puchert's state law claim does not interfere with the provisions of the collective bargaining agreement, we must also consider whether application of state law in this case interferes with the scheme of the RLA.

This Court recently reviewed the question of pre-emption in the area of labor law in *Gouveia v. Napili Kai, Ltd.*, 65 Haw. 189, 649 P.2d 1119 (1982). There we concluded that the National Labor Relations Act (NLRA) bestowed exclusive jurisdiction to the National Labor Relations Board on certain matters, *Id.* at 193-194, quoting *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959). Yet congress did not wholly pre-empt state regulation. *Id.* at 194, quoting *Garner v.*

*Teamsters Union*, 346 U.S. 485 (1953). States retained the "power to regulate where the activity regulated was merely a peripheral concern of the [NLRA], and "where the regulated conduct touched interests so deeply rooted in local feeling and responsibility that in the absence of compelling congressional direction, . . . [it] could not infer that congress had deprived the states of power to act." *Id.* at 195, quoting *San Diego Bldg. Trades Council v. Garmon*, *supra*.

*Gouveia* and the cases cited therein examined the conflict between state law and the NLRA. This case, on the other hand, involves federal-state relations under the RLA, but the problems and considerations are analogous. *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969), and courts have applied standards adopted in NLRA pre-emption cases to RLA cases. *E.g., Beers v. Southern Pacific Transportation Company, supra; Magnuson v. Burlington Northern, Inc., supra; Majors v. U.S. Air Inc.*, 525 F. Supp. 853 (D. Md. 1981); *Jackson v. Consolidated Rail Corp., supra.*

The precise issue of whether state statutes prohibiting unlawful discharges for injuries compensable under workers' compensation laws withstands federal pre-emption was presented in *Peabody Galion v. Dollar*, *supra*, and *Vaughn v. Pacific Northwest Bell Co.*, *supra*.

The Oklahoma statute examined in *Peabody Galion* and the Oregon statute in *Vaughn* are substantially similar to HRS § 378-32. Both the Tenth Circuit Court of Appeals[1] and the Oregon Supreme Court, respectively, concluded that the state statutes are not pre-empted by federal labor laws. Both courts found that the subject of the respective statutes was of peripheral concern to the federal laws because it had nothing to do with collective bargaining or union organization. *Peabody Galion*, 666 F.2d at 1316; *Vaughn*, 289 Or. at 82, 611 P.2d at 287. Additionally, workers' compensation "is pre-eminently a matter of state concern," *Peabody Galion*, 666 F.2d at 1316, and the "state has a substantial interest in protecting the integrity of its workers' compensation system." *Vaughn*, 289 Or. at 82, 611 P.2d at 287.

We agree with the analysis of both the Tenth Circuit and the Oregon Supreme Court in these cases. While both cases were de-

[1] *Peabody Galion* came before the Tenth Circuit Court of Appeals as a diversity action.

cided in the context of the NLRA, we find the same standard applicable here and the considerations analogous. We, therefore, hold that HRS § 378-32, is not pre-empted by the RLA in this case, and that the department of labor and the state courts have jurisdiction to hear Puchert's complaint. The source of the right on which Puchert bases his complaint is state statute, not the collective bargaining agreement. His claim of discrimination in violation of the statute could not be considered by the Adjustment Board whose authority extends only to interpretation or application of the collective bargaining agreement. Thus, Puchert's only means of having his cause of action heard is through the administrative and judicial procedures prescribed by state statute. Furthermore, the state statute on which Puchert relies in advancing his unlawful discharge claim is not pre-empted by the RLA. The state has a substantial interest in the welfare of workers who are injured in the course of their employment and to see that they are not penalized for pursuing remedies granted to them by statute. Such regulation by the state does not interfere with the scheme and purposes of the RLA.

II.

We now turn to an analysis of HRS §378-33(b), which reads:

> No complaint shall be filed after the expiration of thirty days after the alleged act of unlawful suspension or discharge, except that an alleged act of unlawful discharge under subsection 378-32(2) occurring while the aggrieved employee is still physically or mentally incapacitated and unable to work shall be considered to have occurred on the date the aggrieved employee is able to return to work.

HRS § 378-32(2)[2] makes it unlawful for an employer to suspend or

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[2] § 378-32 Unlawful suspension or discharge from employment. It shall be unlawful for any employer to suspend or discharge any of his employees:

(2) Solely because the employee has suffered a work injury which arose out of and in the course of his employment with the employer and which is compensable under chapter 386 unless the employee is not longer capable of performing his work as a result of the work injury and the employer has no other available work with the employee is capable of performing. Any employee who is discharged

discharge any employee solely because of a work injury compensable under the workers' compensation statutes, HRS chapter 386.

Where the language of the statute is plain and unambiguous, and the literal application of the language would not produce an absurd or unjust result, and the language is cleraly consistent with the purposes and policies of the statute, judicial construction is inappropriate and it is our duty to give effect to the law according to its plain and obvious meaning. *State v. Palama*, 62 Haw. 159, 612 P.2d 1168 (1980).

However, where the language of the statute is ambiguous, the court's primary objective is to ascertain and give effect to legislative intention. *In re Hawaiian Telephone Co.*, 61 Haw. 572, 608 P.2d 383 (1980).

We find the statute here to be capable of more than one interpretation. Appellees construe HRS § 378-33(b) to allow an employee two discrete periods in which to file a complaint for unlawful discharge or suspension. The first is within 30 days after the alleged act of unlawful discharge or suspension. The second is within 30 days after the employee is able to return to work. Under this construction, assuming Puchert was discharged on January 9, 1979, he had from then until February 9, 1979 in which to file his complaint; or, assuming Puchert was able to return to work on August 7, 1979, he had within 30 days after August 7th to file his complaint of unlawful discharge.

Appellant argues that HRS § 378-33(b) establishes only the outside time limit for filing a complaint, but does not impose a time *before* when a complaint may not be filed. *See Anisgard v. Exxon Corp.*, 409 F. Supp. 212 (E.D. La. 1975). As applied to this case, assuming Puchert had been incapacitated at the time of discharge, he could have filed a complaint at any time prior to thirty days after he was able to return to work.

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because of the work injury shall be given first preference of re-employment by the employer in any position which the employee is capable of performing and which becomes available after the discharge and during the period thereafter until the employee secures new employment. This paragraph shall not apply to any employer in whose employment there are less than three employees at the time of the work injury or who is a party to a collective bargaining agreement which prevents the continued employment or re-employment of the injured employee.

Finding both interpretations of section 378-33(b) to be reasonable, and therefore ambiguous, we turn our efforts to discerning legislative intent.

A.

The substance of section 378-32(2), which creates the right of action for unlawful retaliatory discharge, was originally enacted as part of the workers' compensation statute. Act 116, § 97-135, 1963 Haw. Sess. Laws.[3] In 1970, a legislative determination was made that this statute was more appropriately placed with other statutes dealing with the enforcement division of the department of labor and industrial relations. That statute was therefore repealed and substantially re-enacted as HRS § 378-32. Act 64, § 2, 1970 Haw. Sess. Laws; Sen. Stand. Comm. Rep. No. 606-70 in 1970 Senate Journal at 1257.

The purpose of this statute is to preserve the integrity of the workers'compensation law by protecting employees from retaliatory discharges. If an employer could, with impunity, coerce an employee into foregoing his rights, the employer would be able to destroy the function of the law and circumvent an obligation imposed upon him by the legislature. Larson, *Workmen's Compensation Law* § 68.36(a).

Prior to 1974, HRS § 378-33 required all complaints to be filed within thirty days of the alleged unlawful discharge or suspension. However, in 1974, the legislature was prompted to "extend the time within which an employee who has been unlawfully suspended or discharged in violation of § 378-32(2) may file a complaint. . . ." Hse. Stand. Comm. Rep. No. 624-74 in 1974 House Journal at 795-796. This was due to the fact that some employees who were incapacitated by work injuries had been deprived of rights under the law because they were unable to file complaints within thirty days of the discharge or suspension. Thus, HRS § 378-33(b) was amended.[4]

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[3] Originally designated as § 97-135; later redesignated as § 386-141.

[4] The underscored language was added in 1974:

No complaint shall be filed after the expiration of thirty days after the alleged act of unlawful suspension or discharge, *except that an alleged act of unlawful*

This legislative history suggests the remedial purpose of the provision extending the time for filing complaints.

Furthermore, this court has long recognized the remedial character of the workers' compensation statutes and has construed them liberally to effectuate their beneficient purposes. *Evanson v. University of Hawaii*, 52 Haw. 595, 483 P.2d 187 (1971); Re *Ichijiro Ikoma*, 23 Haw. 291 (1916).

Since the legislative intent of HRS § 378-32(2) is to protect claimants under our workers' compensation law, the time limits established under § 378-33(b) should be liberally construed to accomplish the humanitarian objective of the legislation. The construction of this section allowing a hearing on the merits and providing the employee with the avenue by which he may be afforded a remedy for the violation of his rights would be more consonant with the legislative enactment of remedial social legislation for workers than would a technical reading which would deny relief without an opportunity to be heard. We fail to see that a construction allowing an early filing would seriously compromise to undermine any of the goals or policies of the legislation. Nor have Appellees shown any prejudice by such construction.

B.

In analogous situations where employment discrimination suits were brought under the Federal Civil Rights and Age Discrimination Acts, federal courts have refused to dismiss suits prematurely filed. *E.g., Hoover v. Opportunities Indus. Ctr. of Roanoake Valley, Inc.* 348 F. Supp. 657 (W.D. Va. 1972), *Henderson v. Eastern Freight Ways, Inc.*, 460 F.2d 258 (4th Cir. 1972), *Budreck v. Crocker National Bank*, 407 F. Supp. 635 (N.D. Cal. 1976), *Anisgard v. Exxon Corp, supra.* Recognizing the remedial and humanitarian nature of the respective statutes, *Henderson v. Eastern Freight Ways, Inc., supra; Moses v. Falstaff Brewing Co.*, 525 F.2d 92 (8th Cir. 1975), the federal courts have generously construed the law to afford claimants hearings on

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*discharge under subsection 378-32(2) occurring while the aggrieved employee is still physically or mentally incapacitated and unable to work shall be considered to have occurred on the date the aggrieved employee is able to return to work.*

the merits and to prevent the loss of valuable rights. *See, also, Berg v. Richmond Unified School District*, 528 F.2d 1208 (9th Cir. 1975), *Black Musicians of Pittsburgh v. Local 60-471, American Federation of Musicians*, 375 F. Supp. 902 (W.D. Pa. 1974).

C.

Appellee Agsalud urges affirmance of the circuit court's decision on the grounds that a liberal interpretation of HRS § 378-33(b) would open the "flood gates" for untimely filed complaints and thereby create a great inconvenience and an onerous administrative burden to the agency. (Answering Brief of Appellee Agsalud, p. 19.)

By construing HRS § 378-33(b) liberally to preserve Puchert's claim here, we do not require the department to hold all complaints in abeyance until an event occurs which substantiates the claim. If, at the time the department is ready to proceed with a hearing of the complaint but the claimant is still unable to return to work, the department then may exercise its discretion to continue the hearing until timely moved on by the claimant, or may dismiss the complaint without prejudice.[5] *See Henderson v. Eastern Freight Ways Inc., supra; Black Musicians of Pittsburgh v. Local 60-471, American Federation of Musicians, AFL-CIO, supra.*

We also note that the department sits in an adjudicatory capacity in hearing complaints of unlawful discharge, HRS § 378-35, and therefore, it must remain neutral. Whether the filing of a complaint at any given time may be a convenience or inconvenience to the agency is irrelevant and not a proper consideration in adjudicating disputes between the employer and employee.

Based on the foregoing, we hold that an employee, pursuant to HRS § 378-32(2) and (3), may file a complaint prior to the date he is able to return to work.

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[5] Continuing a hearing, rather than dismissing a complaint, avoids the problem of having to re-file and re-process the same paperwork. When the claimant moves on for hearing after the continuance, he is, in essence, re-filing the complaint. Such "re-filing" must be done within the time limits imposed by HRS § 378-33(b), *i.e.*, no later than thirty days after the claimant is able to return to work.

III.

Lastly, Pan Am argues that Appellant's claim for relief should be barred by the equitable doctrine of laches. Upon a careful review of the record, we conclude that Pan Am's assertion of laches is without merit. *See Adair v. Hustace*, 64 Haw. 314, 640 P.2d 294 (1982).

CONCLUSION

We hold that the circuit court erred in affirming the director's decision dismissing Puchert's complaint for untimely filing. Further, we hold that Puchert's statutory claim is not pre-empted by the collective bargaining agreement or federal labor laws, nor is his claim barred by the doctrine of laches. We, therefore, reverse and remand Puchert's complaint to the department for a hearing on the merits.

*Herbert R. Takahashi* for appellant.

*Arthur Muraoka* and *Jared H. Jossem* (*Jared H. Jossem* and *John L. Knorek* on the brief; *Torkildson, Katz, Jossem & Loden* of counsel) for appellee Pan American World Airways.

On the brief: *Juliette T. Sarmiento*, Deputy Attorney General, for appellee Joshua C. Agsalud, Director, Department of Labor & Industrial Relations.

# APPENDIX B

IN THE SUPREME COURT OF THE STATE OF HAWAII

OCTOBER TERM 1983

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|---|---|
| GEORGE K. PUCHERT,<br><br>Appellant,<br><br>vs.<br><br>JOSHUA C. AGSALUD, in his capacity as Director of the State of Hawaii, Department of Labor and Industrial Relations; and PAN AMERICAN WORLD AIRWAYS,<br><br>Appellees. | NO. 8908 |

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Filed April 18, 1984

NO. ____

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FILED
1984 APR 18 AM 9:44
Sandra N. Yasui
CLERK SUPREME COURT

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

CERTIFICATE OF SERVICE

Of Counsel:

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I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the Clerk of the Supreme Court of the State of Hawaii.

APR 18 1984

Dated, at Honolulu, Hawaii, _____ A.D. 19__

Clerk, Supreme Court, State of Hawaii

Of Counsel:

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IN THE SUPREME COURT OF THE

STATE OF HAWAII

| | |
|---|---|
| GEORGE K. PUCHERT,<br><br>Appellant,<br><br>vs.<br><br>JOSHUA C. AGSALUD, in his capacity as Director of the State of Hawaii, Department of Labor and Industrial Relations; and PAN AMERICAN WORLD AIRWAYS,<br><br>Appellees. | NO. 8908<br><br>NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES |

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that PAN AMERICAN WORLD AIRWAYS, the appellee above named, hereby appeals to the Supreme Court of the United States from the final judgment

(CERTIFICATE OF SERVICE ATTACHED)

of the Supreme Court of the State of Hawaii holding that Hawaii Revised Statute § 378-33 is not repugnant to or pre-empted by the Railway Labor Act, 45 U.S.C. § 151 et seq., entered in this action on January 27, 1984.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Barry W. Marr

BARRY W. MARR
JAMES H. HERSHEY

Attorneys for Appellant
Pan American World Airways

No. 8908
George K. Puchert vs.
Joshua C. Agsalud, et al.,
NOTICE OF APPEAL TO THE
SUPREME COURT OF THE
UNITED STATES

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES has been served on opposing counsel by hand delivering said copies on APR 18, 1984, to the following addresses:

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the State of Hawaii,
Department of Labor and
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DATED: Honolulu, Hawaii, APR 18, 1984.

Barry W. Marr
BARRY W. MARR
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Attorneys for Appellee
Pan American World
Airways

# APPENDIX C

## Supreme Court of the United States

No. A-844

PAN AMERICAN WORLD AIRWAYS, INC.,

Appellant,

v.

GEORGE PUCHERT

ORDER

UPON CONSIDERATION of the application of counsel for the appellant,

IT IS ORDERED that the time for docketing an appeal in the above-entitled cause be, and the same is hereby, extended to and including May 25, 1984.

/s/ William H. Rehnquist
Associate Justice of the Supreme Court of the United States

Dated this 20th day of April, 1984.

# APPENDIX D

## PART III. UNLAWFUL SUSPENSION OR DISCHARGE

**§378-31 Definitions.** As used in this part:

(1) "Director" means the director of labor and industrial relations.

(2) "Department" means the department of labor and industrial relations.

(3) "Employer" includes any individual, partnership, association, joint-stock company, trust, corporation, the personal representative of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any persons, but shall not include the State or any political subdivision thereof or the United States.

(4) "Employee" includes any person suffered or permitted to work.

(5) "Wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation. It shall include the reasonable cost, as determined by the director under chapter 387, to the employer of furnishing an employee with board, lodging, or other facilities if the board, lodging, or other facilities are customarily furnished by the employer to his employees but shall not include tips or gratuities of any kind.

(6) "Appeal board" means the labor and industrial relations appeal board. [L 1967, c 22, pt of §1; HRS §378-31; am L 1976, c 200, pt of §1]

**§378-32 Unlawful suspension or discharge from employment.** It shall be unlawful for any employer to suspend or discharge any of his employees:

(1) Solely because the employer was summoned as a garnishee in a cause where the employee is the debtor or because the employee has filed a petition in proceedings for a wage earner plan under Chapter XIII of the Bankruptcy Act; or

(2) Solely because the employee has suffered a work injury which arose out of and in the course of his employment with the employer and which is compensable under chapter 386 unless the employee is no longer capable of performing his work as a result of the work injury and the employer has no other available work which the employee is capable of performing. Any employee who is discharged because of the work injury shall be given first preference of re-employment by the employer in any position which the employee is capable of performing and which becomes available after the discharge and during

the period thereafter until the employee secures new employment. This paragraph shall not apply to any employer in whose employment there are less than three employees at the time of the work injury or who is a party to a collective bargaining agreement which prevents the continued employment or re-employment of the injured employee. [L 1967, c 22, pt of §1; HRS §378-32; am L 1970, c 64, §2]

**§378-33 Complaint against unlawful suspension or discharge.** (a) Any employee aggrieved by an alleged unlawful suspension or discharge may file with the department of labor and industrial relations a complaint in writing, stating the name and address of the employer alleged to have committed the unlawful suspension or discharge, and shall set forth the particulars thereof and other information as may be required by the department.

(b) No complaint shall be filed after the expiration of thirty days after the alleged act of unlawful suspension or discharge, except that an alleged act of unlawful discharge under subsection 378-32(2) occurring while the aggrieved employee is still physically or mentally incapacitated and unable to work shall be considered to have occurred on the date the aggrieved employee is able to return to work. [L 1967, c 22, pt of §1; HRS §378-33; am L 1974, c 150, §1]

**§378-34 Proceeding and hearing on complaint.** (a) After the filing of any complaint, the department of labor and industrial relations shall serve a copy of the complaint upon the employer charged. Service may be by delivery to the employer or by mail. The employer may file an answer to the complaint.

(b) A hearing on the complaint shall be held by the department in conformance with chapter 91. [L 1967, c 22, pt of §1]

**§378-35 Findings and order.** If the department of labor and industrial relations finds, after a hearing, that an employer has unlawfully suspended or discharged an employee in violation of section 378-32, the department may order the reinstatement of the employee with or without back pay or may order the payment of back pay without reinstatement. [L 1967, c 22, pt of §1]

**§378-36 Judicial review.** Any person aggrieved by the order of the department of labor and industrial relations shall be entitled to judicial review as provided by section 91-14. [L 1967, c 22, pt of §1]

**§378-37 Petition for enforcement of order.** If any employer fails or neglects to comply with the final order of the department of labor and industrial relations from which no appeal has been taken as provided by this part, the

department or the employee affected may petition the circuit court wherein the employer resides or transacts business for the enforcement of the order and for any other appropriate relief. Upon filing of the petition and the record of the proceedings, including all documents and papers on file in the matter, the pleadings and testimony upon which the order was entered, and the order, and upon service of proper notice thereof upon the employer, the circuit court shall have jurisdiction in the premises. [L 1967, c 22, pt of §1]

APPENDIX E



## § 151. Definitions

When used in this chapter and section 225 of Title 28 and for the purposes of said chapter and section—

First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided, however,* That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this chapter.

Third. The term "Mediation Board" means the National Mediation Board created by this chapter.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or

within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however*, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this chapter or by the orders of the Commission.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the United States District Court for the District of Columbia; and the term "court of appeals" includes the United States Court of Appeals for the District of Columbia.

## § 152. General duties—Duty of carriers and employees to settle disputes

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

**Consideration of disputes by representatives**

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

**Designation of representatives**

Third. Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this chapter need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

**Organization and collective bargaining; freedom from interference by carrier; assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden**

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the

wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

**Agreements to join or not to join labor organizations forbidden**

Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this chapter, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

**Conference of representatives; time; place; private agreements**

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*, That nothing in this chapter shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

**Change in pay, rules, or working conditions contrary to agreement or to section 156 forbidden**

Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title.

**Notices of manner of settlement of disputes; posting**

Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this chapter, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

**Disputes as to identity of representatives; designation by Mediation Board; secret elections**

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

**Violations; prosecution and penalties**

Tenth. The willful failure or refusal of any carrier, its officers or agents, to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000, nor more than $20,000, or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any United States attorney to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided*, That nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

**Union security agreements; check-off**

Eleventh. Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to

tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided*, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) of this paragraph shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in the First Division of paragraph (h) of section 153 of this title defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) of this paragraph shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided, however*, That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further*, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

(d) Any provisions in paragraphs Fourth and Fifth of this section in conflict herewith are to the extent of such conflict amended.

## § 153. National Railroad Adjustment Board—Establishment; composition; powers and duties; divisions; hearings and awards; judicial review

First. There is established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after June 21, 1934, and it is provided—

(a) That the said Adjustment Board shall consist of thirty-four members, seventeen of whom shall be selected by the carriers and seventeen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 152 of this title.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one voting representative on any division of the Board.

(c) Except as provided in the second paragraph of subsection (h) of this section, the national labor organizations, as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one voting representative on any division of the Board.

(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after June 21, 1934, in case of any original appointment to office of a member of the Adjustment Board, or in case of a vacancy in any such office within thirty days

after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member, investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 152 of this title and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of paragraph (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of eight members, four of whom shall be selected and designated by the carriers and

four of whom shall be selected and designated by the labor organizations, national in scope and organized in accordance with section 151a and section 152 of this title and which represent employees in engine, train, yard, or hostling service: *Provided, however,* That each labor organization shall select and designate two members on the First Division and that no labor organization shall have more than one vote in any proceedings of the First Division or in the adoption of any award with respect to any dispute submitted to the First Division: *Provided further, however,* That the carrier members of the First Division shall cast no more than two votes in any proceedings of the division or in the adoption of any award with respect to any dispute submitted to the First Division.

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, carmen, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or

by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however,* That except as provided in paragraph (h) of this section, final awards as to any such dispute must be made by the entire division as hereinafter provided.

(*l*) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee", to sit with the division as a member thereof, and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this chapter for the appointment of arbitrators and shall fix and pay the compensation of such referees.

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute. In case a dispute arises involving an interpretation of the award, the division of the Board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division of the Adjustment Board eligible to vote shall be competent to make an award with respect to any dispute submitted to it.

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named. In the event any division determines that an award favorable to the petitioner should not be made in any dispute referred to it, the division shall make an order to the petitioner stating such determination.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be conclusive on the parties, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board: *Provided, however*, That such order may not be set aside except for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.

(q) If any employee or group of employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court in

which a petition under paragraph (p) could be filed, a petition for review of the division's order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Adjustment Board. The Adjustment Board shall file in the court the record of the proceedings on which it based its action. The court shall have jurisdiction to affirm the order of the division or to set it aside, in whole or in part, or it may remand the proceeding to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of Title 28.

(r) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

(s) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

(t) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

(u) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

(v) The Adjustment Board shall meet within forty days after June 21, 1934, and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its

members to act as vice chairman: *Provided, however,* That the chairmanship and vice-chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice-chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

(w) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this chapter, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this chapter and disbursed by such agencies, employees, and officers.

(x) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (*l*) of this section, with respect to a division of the Adjustment Board.

**System, group, or regional boards; establishment by voluntary agreement; special adjustment boards; establishment, composition, designation of representatives by Mediation Board, neutral member, compensation, quorum, finality and enforcement of awards**

Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this chapter,

from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

If written request is made upon any individual carrier by the representative of any craft or class of employees of such carrier for the establishment of a special board of adjustment to resolve disputes otherwise referable to the Adjustment Board, or any dispute which has been pending before the Adjustment Board for twelve months from the date the dispute (claim) is received by the Board, or if any carrier makes such a request upon any such representative, the carrier or the representative upon whom such request is made shall join in an agreement establishing such a board within thirty days from the date such request is made. The cases which may be considered by such board shall be defined in the agreement establishing it. Such board shall consist of one person designated by the carrier and one person designated by the representative of the employees. If such carrier or such representative fails to agree upon the establishment of such a board as provided herein, or to exercise its rights to designate a member of the board, the carrier or representative making the request for the establishment of the special board may request the Mediation Board to designate a member of the special board on behalf of the carrier or representative upon whom such request was made. Upon receipt of a request for such designation the Mediation Board shall promptly make such designation and shall select an individual associated in interest with the carrier or representative he is to represent, who, with the member appointed by the carrier or representative requesting the establishment of the special board, shall constitute the board. Each member of the board shall be compensated by the party he is to represent. The members of the board so designated shall determine all matters not previously agreed upon by the carrier and the representative of the employees with respect to the establishment and jurisdiction of the board. If they are unable to agree such matters shall be determined by a neutral member of the board selected or appointed and compensated in the same manner as is hereinafter provided with respect to situations where the members of the board are unable to agree upon an award. Such neutral member shall cease to be a member of the board when he has determined such matters. If with respect to any dispute or group of disputes the members of the board designated by the carrier and the representative are unable to

agree upon an award disposing of the dispute or group of disputes they shall by mutual agreement select a neutral person to be a member of the board for the consideration and disposition of such dispute or group of disputes. In the event the members of the board designated by the parties are unable, within ten days after their failure to agree upon an award, to agree upon the selection of such neutral person, either member of the board may request the Mediation Board to appoint such neutral person and upon receipt of such request the Mediation Board shall promptly make such appointment. The neutral person so selected or appointed shall be compensated and reimbursed for expenses by the Mediation Board. Any two members of the board shall be competent to render an award. Such awards shall be final and binding upon both parties to the dispute and if in favor of the petitioner, shall direct the other party to comply therewith on or before the day named. Compliance with such awards shall be enforcible by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board.

Note 233

Where right to appeal from a judgment in action to enforce award of National Railroad Adjustment Board had been extinguished before United States intervened, such intervention could not be used to renew that lost right, and notice of appeal, not filed within 30 days from entry of judgment, was not timely and Court of Appeals had no jurisdiction to hear appeal. Id.

234. —— Violations of collective bargaining agreements

Rejection by federal courts of Railway Adjustment Board's interpretation of collective bargaining agreement was beyond their province where it could not be said that Board's determination that discharged engineer was entitled to reinstatement and back pay was wholly baseless and completely without reason. Gunther v. San Diego A. E. Ry. Co., Cal.1965, 86 S.Ct. 368, 382 U.S. 257, 15 L.Ed.2d 308.

On issue of amount of award to which wrongfully discharged engineer was entitled, district court could determine how much time had been lost by reason of wrongful removal and could determine any proper issues that could be raised with reference to amount of money necessary to compensate for time lost. Id.

Following determination by National Railroad Adjustment Board as to whether railroad violated collective bargaining agreement by contracting out certain work and assigning certain other work to employees represented by union competing with complaining union, neither district court nor Court of Appeals would be permitted to reappraise the record and determine independently whether the railroad had violated agreement. Brotherhood of R. R. Signalmen of America v. Southern Ry. Co., C.A.N.C. 1967, 380 F.2d 30, certiorari denied 88 S. Ct. 321, 389 U.S. 958, 19 L.Ed.2d 368.

Regardless of correctness at time of entry of District Court's judgment which allowed nominal damages rather than the full day's pay awarded by Adjustment Board for each incident of railroad's collective bargaining contract violation involving "herding" of locomotives, Court of Appeals was required to give appellate consideration to that judgment in view of 1966 Amendments to this section deleting exception of money awards from provision making awards of the Board final and binding and making its findings and order conclusive. Brotherhood of R. R. Trainmen v. Denver & R. G. W. R. Co., C.A.Colo.1966, 370 F.2d 833, certiorari denied 87 S.Ct. 1375, 386 U.S. 1018, 18 L.Ed. 2d 456.

United States District Court had no jurisdiction to review award made by special board of adjustment in dispute which arose between union and railroad over application of mediation agreement to a particular group of employees represented by union. Brotherhood of Ry., Airline and S. S. Clerks, Freight Handlers, Exp. and Station Emp. v. Special Bd. of Adjustment No. 605, D.C.Ill.1968, 286 F.Supp. 397, affirmed 410 F.2d 520, certiorari denied 90 S.Ct. 177, 396 U.S. 887, 24 L.Ed.2d 162.

Substitution by court of its interpretation of collective bargaining agreement for that of National Railroad Adjustment Board would be improper. Raabe v. Florida East Coast Ry. Co., D.C.Fla.1966, 250 F.Supp. 351.

## § 154. National Mediation Board—Board of Mediation abolished; National Mediation Board established; composition; term of office; qualifications; salaries; removal

First. The Board of Mediation is abolished, effective thirty days from June 21, 1934, and the members, secretary, officers, assistants, employees, and agents thereof, in office upon June 21, 1934, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this chapter had not been passed. There is established, as an independent agency in the executive branch of the Government, a board to be known as the "National Mediation Board", to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. Each member of the Mediation Board in office on January 1, 1965, shall be deemed to have been appointed for a term of office which shall expire on July 1 of the year his term would have otherwise expired. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this chapter. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board. Upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified.

All cases referred to the Board of Mediation and unsettled on June 21, 1934, shall be handled to conclusion by the Mediation Board.

A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

**Chairman; principal office; delegation of powers; oaths; seal; report**

Second. The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

**Appointment of experts and other employees; salaries of employees; expenditures**

Third. The Mediation Board may (1) subject to the civil service laws, appoint such experts and assistants to act in a confidential capacity and such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with chapter 51 and subchapter III of chapter 53 of Title 5, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 153 of this title, and boards of arbitration, in accordance with the provisions of this section and sections 153 and 157 of this title, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

**Delegation of powers and duties**

Fourth. The Mediation Board is authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this chapter or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or ref-

erence. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, [and] such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

**Transfer of officers and employees of Board of Mediation; transfer of appropriation**

Fifth. All officers and employees of the Board of Mediation (except the members thereof, whose offices are abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or compensation to conform to the duties to which such officers and employees may be assigned.

All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures.

## § 155. Functions of Mediation Board—Disputes within jurisdiction of Mediation Board

First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 160 of this title) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this chapter.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 160 of this title, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

**Interpretation of agreement**

Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this chapter, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

**Duties of Board with respect to arbitration of disputes; arbitrators; acknowledgment of agreement; notice to arbitrators; reconvening of arbitrators; filing contracts with Board; custody of records and documents**

Third. The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 157 of this title:

(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 157 of this title, it shall be the duty of the Mediation Board to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

If an arbitrator named by the Mediation Board, in accordance with the provisions of this chapter, shall be removed by such Board as provided by this chapter, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly, to select another arbitrator, in the same manner as provided in this chapter for an original appointment by the Mediation Board.

(b) Any member of the Mediation Board is authorized to take the acknowledgment of an agreement to arbitrate under this chapter.

When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board, to be filed in its office.

(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

(e) Within sixty days after June 21, 1934, every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact, including also a statement

of the rates of pay, rules, and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or rates of pay, rules, and working conditions have been made effective.

(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession.

## § 156. Procedure in changing rates of pay, rules, and working conditions

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

## § 157. Arbitration—Submission of controversy to arbitration

First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in sections 151–156 of this title, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however*, That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this chapter or otherwise.

**Manner of selecting board of arbitration**

Second. Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

(b) In the case of a board of six the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

**Board of arbitration; organization; compensation; procedure—(a) Notice of selection or failure to select arbitrators**

Third. When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Mediation Board; and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this chapter, they shall, at the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or to complete such selection.

(b) Organization of board; procedure

The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however,* That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

(c) Duty to reconvene; questions considered

Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

(d) Competency of arbitrators

No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

(e) Compensation and expenses

Each member of any board of arbitration created under the provisions of this chapter named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

(f) Award; disposition of original and copies

The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the

hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however*, That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under the Interstate Commerce Act, as amended.

**(g) Compensation of assistants to board of arbitration; expenses; quarters**

A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

**(h) Testimony before board; oaths; attendance of witnesses; production of documents; subpoenas; fees**

All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the Board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and he is, authorized, and it shall be his duty, to issue such subpoenas.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena.

## § 158. Agreement to arbitrate; form and contents; signatures and acknowledgment; revocation

The agreement to arbitrate—

(a) Shall be in writing;

(b) Shall stipulate that the arbitration is had under the provisions of this chapter;

(c) Shall state whether the board of arbitration is to consist of three or of six members;

(d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or court of appeals of the United States, or before a member of the Mediation Board, and, when so acknowledged, shall be filed in the office of the Mediation Board;

(e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;

(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided*, That the parties may agree at any time upon an extension of this period;

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

(n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however,* That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this chapter, delivered to such board of arbitration.

## § 159. Award and judgment thereon; effect of chapter on individual employee—Filing of award

First. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

**Conclusiveness of award; judgment**

Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter

judgment on the award, which judgment shall be final and conclusive on the parties.

**Impeachment of award; grounds**

Third. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

(a) That the award plainly does not conform to the substantive requirements laid down by this chapter for such awards, or that the proceedings were not substantially in conformity with this chapter;

(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or

(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided, however,* That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this chapter: *Provided further,* That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

**Effect of partial invalidity of award**

Fourth. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided, however,* That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

**Appeal; record**

Fifth. At the expiration of 10 days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said 10 days either party shall appeal therefrom to the court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

**Finality of decision of court of appeals**

Sixth. The determination of said court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

**Judgment where petitioner's contentions are sustained**

Seventh. If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

**Duty of employee to render service without consent; right to quit**

Eighth. Nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

## § 160. Emergency Board

If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this chapter and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the Resident, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

## § 161. Effect of partial invalidity of chapter

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. All Acts or parts of Acts inconsistent with the provisions of this chapter are repealed.

## § 162. Appropriation

There is authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this chapter.

## § 163. Repeal of prior legislation; exception

Chapters 6 and 7 of this title, providing for mediation, conciliation, and arbitration, and all Acts and parts of Acts in conflict with the provisions of this chapter are repealed, except that the members, secretary, officers, employees, and agents of the Railroad Labor Board, in office on May 20, 1926, shall receive their salaries for a period of 30 days from such date, in the same manner as though this chapter had not been passed.

## § 164. Repealed. Oct. 10, 1940, c. 851, § 4, 54 Stat. 1111

CARRIERS BY AIR

## § 181. Application of sections 151 to 152 and 154 to 163 to carriers by air

All of the provisions of sections 151 to 152 and 154 to 163 of this title are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

May 20, 1926, c. 347, § 201, as added Apr. 10, 1936, c. 166, 49 Stat. 1189.

## § 182. Same; duties, penalties, benefits, and privileges

The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of sections 151 to 152 and 154 to 163 of this title shall apply to said carriers by air and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of "carrier" and "employee", respectively, in section 151 of this title.

May 20, 1926, c. 347, § 202, as added Apr. 10, 1936, c. 166, 49 Stat. 1189.

## § 183. Disputes within jurisdiction of Mediation Board

The parties or either party to a dispute between an employee or a group of employees and a carrier or carriers by air may invoke the services of the National Mediation Board and the jurisdiction of said Mediation Board is extended to any of the following cases:

(a). A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to an adjustment board, as hereinafter provided, and not adjusted in conference between the parties, or where conferences are refused.

The National Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

The services of the Mediation Board may be invoked in a case under sections 181 to 188 of this title in the same manner and to the same extent as are the disputes covered by section 155 of this title. May 20, 1926, c. 347, § 203, as added Apr. 10, 1936, c. 166, 49 Stat. 1189.

## § 184. System, group, or regional boards of adjustment

The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on April 10, 1936 before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes: but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of sections 181 to 188 of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 153 of this title.

Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group of carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in sections 151 to 163 and 181 to 188 of this title shall prevent said carriers by air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of sections 181 to 188 of this title, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction.

## § 185. National Air Transport Adjustment Board

When, in the judgment of the National Mediation Board, it shall be necessary to have a permanent national board of adjustment in order to provide for the prompt and orderly settlement of disputes between said carriers by air, or any of them, and its or their employees, growing out of grievances or out of the interpretation or application of agreements between said carriers by air or any of them, and any class or classes of its or their employees, covering rates of pay, rules, or working conditions, the National Mediation Board is empowered and directed, by its order duly made, published, and served, to direct the said carriers by air and such labor organizations of their employees, national in scope, as have been or may be recognized in accordance with the provisions of sections 151 to 163 and 181 to 188 of this title, to select and designate four representatives who shall constitute a board which shall be known as the "National Air Transport Adjustment Board." Two members of said National Air Transport Adjustment Board shall be selected by said carriers by air and two members by the said labor organizations of the employees, within thirty days after the date of the order of the National Mediation Board, in the manner and by the procedure prescribed by section 153 of this title for the selection and designation of members of the National Railroad Adjustment Board. The National Air Transport Adjustment Board shall meet within forty days after the date of the order of the National Mediation Board directing the selection and designation of its members and shall organize and adopt rules for conducting its proceedings, in the manner prescribed in section 153 of this title. Vacancies in membership or office shall be filled, members shall be appointed in case of failure of the carriers or of labor organizations of the employees to select and designate representatives, members of the National Air Transport Adjustment Board shall be compensated, hearings shall be held, findings and awards made, stated, served, and enforced, and the number and compensation of any necessary assistants shall be determined and the compensation of such employees shall be paid, all in the same manner and to the same extent as provided with reference to the National Railroad Adjustment Board by section 153 of this title. The powers and duties prescribed and established by the provisions of section 153 of this title with reference to the National Railroad Adjustment Board and the several divisions thereof are conferred upon and shall be exercised and performed in like manner and to the same extent by the said National Air Transport Adjust-

ment Board, not exceeding, however, the jurisdiction conferred upon said National Air Transport Adjustment Board by the provisions of sections 181 to 188 of this title. From and after the organization of the National Air Transport Adjustment Board, if any system, group, or regional board of adjustment established by any carrier or carriers by air and any class or classes of its or their employees is not satisfactory to either party thereto, the said party, upon ninety days' notice to the other party, may elect to come under the jurisdiction of the National Air Transport Adjustment Board.

## § 186. Pending cases before Labor Relations Board transferred to Mediation Board

**Codification.** Section, Act May 20, 1926, c. 347, § 206, as added Apr. 10, 1936, c. 166, 49 Stat. 1191, which transferred certain pending cases before the National Labor Relations Board to the Mediation Board, is omitted as executed.

## § 187. Separability clause

If any provision of sections 181 to 188 of this title or application thereof to any person or circumstance is held invalid, the remainder of such sections and the application of such provision to other persons or circumstances shall not be affected thereby.

May 20, 1926, c. 347, § 207, as added Apr. 10, 1936, c. 166, 49 Stat. 1191.

### Historical Note

**References in Text.** Section 186 of this title, included within the reference to sections 181 to 188 of this title, has been omitted as executed.

## § 188. Appropriation authorized

There is authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of sections 181 to 187 of this title.

May 20, 1926, c. 347, § 208, as added Apr. 10, 1936, c. 166, 49 Stat. 1191.

APPENDIX F



SUBCHAPTER I—GENERAL PROVISIONS

## § 141. Short title; Congressional declaration of purpose and policy

(a) This chapter may be cited as the "Labor Management Relations Act, 1947".

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this chapter, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

June 23, 1947, c. 120, § 1, 61 Stat. 136.

## § 142. Definitions

When used in this chapter—

(1) The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

(2) The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(3) The terms "commerce", "labor disputes", "employer", "employee", "labor organization", "representative", "person", and "supervisor" shall have the same meaning as when used in subchapter II of this chapter as amended by this chapter.

June 23, 1947, c. 120, Title V, § 501, 61 Stat. 161.

SUBCHAPTER II—NATIONAL LABOR RELATIONS

## § 151. Findings and declaration of policy

The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when

they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

July 5, 1935, c. 372, § 1, 49 Stat. 449; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 136.

## SUBCHAPTER III—CONCILIATION OF LABOR DISPUTES; NATIONAL EMERGENCIES

### § 171. Declaration of purpose and policy

It is the policy of the United States that—

(a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

(b) the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes; and

(c) certain controversies which arise between parties to collective-bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreements provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies.

June 23, 1947, c. 120, Title II, § 201, 61 Stat. 152.

## § 172. Federal Mediation and Conciliation Service

**Creation; appointment of Director**

(a) There is created an independent agency to be known as the Federal Mediation and Conciliation Service (herein referred to as the "Service", except that for sixty days after June 23, 1947, such term shall refer to the Conciliation Service of the Department of Labor). The Service shall be under the direction of a Federal Mediation and Conciliation Director (hereinafter referred to as the "Director"), who shall be appointed by the President by and with the advice and consent of the Senate. The Director shall not engage in any other business, vocation, or employment.

**Appointment of officers and employees; expenditures for supplies, facilities, and services**

(b) The Director is authorized, subject to the civil service laws, to appoint such clerical and other personnel as may be necessary for the execution of the functions of the Service, and shall fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of Title 5, and may, without regard to the provisions of the civil service laws, appoint such conciliators and mediators as may be necessary to carry out the functions of the Service. The Director is authorized to make such expenditures for supplies, facilities, and services as he deems necessary. Such expenditures shall be allowed and paid upon presentation of itemized vouchers therefor approved by the Director or by any employee designated by him for that purpose.

**Principal and regional offices; delegation of authority by Director; annual report to Congress**

(c) The principal office of the Service shall be in the District of Columbia, but the Director may establish regional offices convenient to localities in which labor controversies are likely to arise. The Director may by order, subject to revocation at any time, delegate any authority and discretion conferred upon him by this chapter to any regional director, or other officer or employee of the Service. The Director may establish suitable procedures for cooperation with State and local mediation agencies. The Director shall make an annual report in writing to Congress at the end of the fiscal year.

**Transfer of all mediation and conciliation services to Service; effective date; pending proceedings unaffected**

(d) All mediation and conciliation functions of the Secretary of Labor or the United States Conciliation Service under section 51 of this title, and all functions of the United States Conciliation Service under any other law are transferred to the Federal Mediation and Conciliation Service, together with the personnel and records of the United States Conciliation Service. Such transfer shall take effect upon the sixtieth day after June 23, 1947. Such transfer shall not affect any proceedings pending before the United States Conciliation Service or any certification, order, rule, or regulation theretofore made by it or by the Secretary of Labor. The Director and the Service shall not be subject in any way to the jurisdiction or authority of the Secretary of Labor or any official or division of the Department of Labor.

June 23, 1947, c. 120, Title II, § 202, 61 Stat. 153; Oct. 28, 1949, c. 782, Title XI, § 1106(a), 63 Stat. 972.

## § 173. Functions of Service

**Settlement of disputes through conciliation and mediation**

(a) It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.

**Intervention on motion of Service or request of parties; avoidance of mediation of minor disputes**

(b) The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties. Whenever the Service does proffer its services in any dispute, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

**Settlement of disputes by other means upon failure of conciliation**

(c) If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without

resort to strike, lock-out, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this chapter.

**Use of conciliation and mediation services as last resort**

(d) Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

June 23, 1947, c. 120, Title II, § 203, 61 Stat. 153.

## § 174. Co-equal obligations of employees, their representatives, and management to minimize labor disputes

(a) [1] In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall—

(1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;

(2) whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and

(3) in case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this chapter for the purpose of aiding in a settlement of the dispute.

June 23, 1947, c. 120, Title II, § 204, 61 Stat. 154.

[1] Section was enacted without a subsec. (b).

## § 182. Exemption of Railway Labor Act from subchapter

The provisions of this subchapter shall not be applicable with respect to any matter which is subject to the provisions of the Railway Labor Act, as amended from time to time.

June 23, 1947, c. 120, Title II, § 212, 61 Stat. 156.

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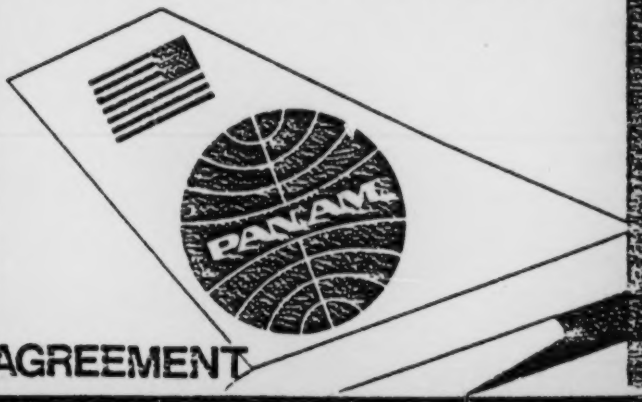
APPENDIX G

PAN AMERICAN WORLD AIRWAYS, INC.

# PORT STEWARDS
# AND
# SENIOR PORT STEWARDS




AGREEMENT

TRANSPORT WORKERS UNION
OF AMERICA, AFL/CIO

EFFECTIVE NOVEMBER 1, 1977

BEST AVAILABLE COPY

TABLE OF CONTENTS


| ARTICLE | SUBJECT | PAGE |
|---|---|---|
| | Preamble | 1 |
| 1 | Purpose of Agreement | 2 |
| 2 | Recognition | 2 |
| 3 | Working Week | 2 |
| 4 | Overtime Compensation | 4 |
| 5 | Emergency Work | 6 |
| 6 | Holidays | 7 |
| 7 | Vacations | 9 |
| 8 | Seniority | 11 |
| 9 | Classifications and Promotions | 14 |
| 10 | Transfers | 15 |
| 11 | Leave of Absence | 16 |
| 12 | Military Leave — Retention of Seniority | 17 |
| 13 | Termination of Employment | 18 |
| 14 | Paid Sick Leave | 18 |
| 15 | General | 22 |
| 16 | Bulletin Boards | 24 |
| 17 | Equal Treatment | 24 |
| 18 | General Benefits | 25 |
| 19 | No Strike — No Lockout | 25 |
| 20 | Management Clause | 25 |
| 21 | Discipline and Discharge | 26 |
| 22 | Adjustment of Grievances | 26 |
| 23 | Board of Adjustment | 28 |
| 24 | Meal Periods | 28 |
| 25 | Absence from Duty | 29 |
| 26 | Foreign Station Assignment | 29 |
| 27 | Physical Examinations | 30 |
| 28 | Missing, Internment, Prisoner or Hostage of War | 31 |
| 29 | Union Shop Agreement | 32 |
| 30 | Severance Allowance | 39 |
| 31 | Bomb Scare/Hijack Coverage | 42 |
| 32 | Mutual Agreement | 43 |
| 33 | Safety | 43 |
| 34 | Duration of Agreement | 47 |

TABLE OF CONTENTS (Cont'd.)


| | APPENDICES | PAGE |
|---|---|---|
| Appendix A | Wage Rates and Administration . . . . | 50 |
| Appendix B | Adjustment Board Agreement. . . . . | 57 |
| Appendix C | Meal Allowance . . . . . | 63 |
| Appendix D | Line Station Special Increments . . . . | 64 |
| Appendix E | Temporary Assignment — Reimbursements . . . . . | 65 |
| Appendix F | Staffing — Line Stations . . . . . | 66 |
| Appendix G | Staffing — IAD, BAL, PHL . . . . . | 67 |
| Appendix H | Staffing — BOS . . . . . | 68 |
| Appendix I | Base Vacancy Preferences . . . . . | 69 |
| Appendix J | Temporary Employment — SEA . . . . | 72 |
| Appendix K | Commissary Employees — GUM . . . . | 73 |
| Appendix L | Union Leaves of Absence . . . . . | 75 |
| Appendix M | Disciplinary Action Records . . . . . | 76 |
| Appendix N | Free/Reduced Rate Transportation . . | 77 |
| Appendix O | Merger Letter . . . . . | 78 |
| Appendix P | Port Stewards — Guam . . . . . | 80 |
| Appendix Q | System Displacement Program . . . . . | 82 |
| Appendix R | Chicago Base. . . . . | 84 |
| Appendix S | Training . . . . . | 85 |
| Appendix T | Vacation Computation, Union L.O.A. . . . . | 86 |

TABLE OF CONTENTS (Cont'd.)


| | SUPPLEMENTS | PAGE |
|---|---|---|
| Supplement I | Group Health Care Insurance (Active Employees) | 87 |
| Supplement II | Group Health Care Insurance (Retired Employees) | 88 |
| Supplement III | Group Life Insurance (Active Employees) | 90 |
| Supplement IV | Pension Plan Amendments | 91 |

AGREEMENT
between
PAN AMERICAN WORLD AIRWAYS, INC.
and
TRANSPORT WORKERS UNION OF AMERICA,
AFL/CIO
Representing
PORT STEWARDS
and
SENIOR PORT STEWARDS

PREAMBLE:

*A-S THIS AGREEMENT is entered into this 29th day of April 1978 by and between Pan American World Airways, Inc. (hereinafter sometimes referred to as the "Company") and the Transport Workers Union of America, AFL/CIO (hereinafter sometimes referred to as the "Union") as representative of the Port Stewards.

---

*Language of paragraph or article result of:

A — Agreement effective January 1, 1947
B — Agreement effective July 1, 1948
C — Agreement effective September 30, 1949
D — Agreement effective March 26, 1951
E — Agreement effective April 14, 1952
F — Agreement effective March 1, 1953
G — Agreement effective June 8, 1954
H — Agreement effective September 10, 1955
I — Agreement effective October 1, 1957
J — Agreement effective March 4, 1959
K — Agreement dated December 15, 1960
L — Agreement effective October 5, 1962
M — Agreement effective September 10, 1964
N — Agreement effective December 23, 1966
O — Agreement effective April 19, 1969
P — Agreement effective June 4, 1971
Q — Agreement effective August 1, 1973
R — Contract Amendments effective November 1, 1975
S — Agreement effective November 1, 1977

## Article 1

## PURPOSE OF AGREEMENT

B THIS AGREEMENT is entered into, under the terms of the Railway Labor Act, as amended, in the mutual interest of the present and future employees, and of the Company, to promote the safety and continuity of air transportation, to further the efficiency and economy of operations, and to stabilize employment under reasonable hours, rates of pay, and working conditions. It is recognized by this Agreement to be the duty of the Company and the employees to cooperate fully, both individually and collectively, for the advancement of said conditions.

## Article 2

## RECOGNITION

A,B,H The Transport Workers Union of America, AFL/CIO, has furnished evidence that, in conformity with the provisions of the Railway Labor Act, as amended, it has been duly designated as the representative of the Port Stewards and Senior Port Stewards employed by the Company and in their behalf to negotiate and conclude an Agreement with the Company covering rates of pay, rules and working conditions. The Company recognizes the Union as the exclusive and sole collective bargaining agency for all personnel enumerated herein.

Except in emergencies, Supervisors will not do productive work.

## Article 13

## TERMINATION OF EMPLOYMENT

B (a) Employees shall give the Company two (2) weeks' notice of resignation in writing.

B (b) Employees laid off through no fault of their own shall be granted two (2) weeks' notice in writing.

B (c) This requirement of notice, set forth in (b) above, shall not apply to a layoff caused by an Act of God, or by a strike of the employees of the Company called without giving the notice required by the Railway Labor Act.

B (d) An employee who resigns in compliance with this Article or whose employment is terminated by the Company shall, upon request, be given factual references in writing for the period of his employment with the Company.

## Article 21

## DISCIPLINE AND DISCHARGE

B (a) It is understood that the Company has the right to discipline or discharge an employee for incompetency, disobedience, dishonesty, disorderly conduct, negligence, absenteeism or any just and sufficient cause.

B (b) During the probationary period an employee may be discharged or disciplined at the Company's option without recourse to the Grievance Procedure.

B (c) An employee who has passed his probationary period may appeal a disciplinary or discharge action in accordance with Article 22.

P (d) All letters of discipline (warning or suspension) will be removed after a period of two (2) years from date of issuance.

## Article 22

## ADJUSTMENT OF GRIEVANCES

B (a) An employee who believes that he has been unjustly dealt with or that any provision of this Agreement has not been properly applied or interpreted may present his grievance in person, or through his representative, within five (5) days to his Supervisor who shall evaluate the grievance and render his decision within five (5) days thereafter.

B (b) If the grievance is still not settled, it may be submitted within five days (5) to the person designated by the Company who shall render a decision within five (5) days.

B (c) If the grievance is still unsettled, it may be submitted in writing to the appropriate Adjustment Board within ten (10) days.

B (d) All submissions and decisions shall be set forth in writing.

B,S (e) An employee and/or accredited Union Representative who, during his scheduled working hours, meets with Company officials on grievances or other pertinent Union business shall be paid at his regular hourly rates for time so spent.

A (f) The Union shall be notified of all grievance meetings and may, if it desires, have a representative present.

(g) The Company shall provide transportation over its regular routes to Union representatives when required in connection with the handling of business deemed essential by the Company and Union.

B (h) An International or Local Officer of the Union who believes that any provision of this Agreement has not been or is not being properly applied or interpreted shall have the right within ten (10) days after such alleged misapplication or misinterpretation to protest such violation to the appropriate Company Representative who shall evaluate such protest and render a decision in writing within fifteen (15) days.

S An International or Local Officer of the Union or an employee who believes that any provision of the Benefit Supplements has not been, or is not being properly applied or interpreted shall have the right to protest such alleged misapplication or misinterpretation, in writing, directly to the appropriate Employee Reations/Labor Relations Officer. Such Officer shall evaluate the protest and render a decision, in writing, within fifteen (15) days.

B (i) If no settlement is reached under Paragraph (h) of this Article, an appeal may be made in writing within thirty (30) days to the appropriate Adjustment Board established under Article 23 of this Agreement.

Article 23

BOARD OF ADJUSTMENT

B.E Any grievance not adjusted in the manner provided for in Article 22 above or any dispute between the Company and the Union or any employee or employees governed by this Agreement involving a violation of the Railway Labor Act or the interpretation or application of this Agreement shall be referred to the appropriate Adjustment Board established by the Adjustment Board Agreement between Pan American World Airways, Inc. and Transport Workers Union of America, effective May 1, 1954, a copy of which is attached hereto and made a part hereof.